

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Adrian Marion Smith, #331894,)	Civil Action No. 3:09-2786-MBS
)	
Plaintiff,)	
)	
v.)	ORDER AND OPINION
)	
South Carolina Department of Corrections;)	
Warden John McCall; Captain Melvin Boseman;)	
Captain Tina Syphertt; Dennis Patterson, Division)	
of Operations; Major Marsh;)	
SCDC Classification Mr. Bellinger)	
)	
Defendants.)	
)	

Plaintiff is an inmate in custody of the South Carolina Department of Corrections (“SCDC”). Defendant is currently housed at the Manning Correctional Institution. Plaintiff, proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983. In his complaint, Plaintiff alleges he has been denied access to the courts, has suffered arbitrary punishment and/or retaliation for filing grievances, and has been denied medical care and other services in violation of his constitutional rights. Plaintiff seeks relief in the form of an injunction and monetary damages.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Joseph McCrorey for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the procedural provisions of 28 U.S.C. § 1915, 28 U.S.C. § 1915A, and the Prison Litigation Reform Act. On December 22, 2009, the Magistrate Judge issued a Report and Recommendation in which he recommended (1) Defendant SCDC be dismissed from this action based upon Eleventh Amendment Immunity; and (2) Defendant Bellinger be dismissed from this action because Plaintiff did not plead factual allegations against Bellinger in the complaint.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge’s report to which objections have been filed. Id. The district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge’s proposed findings and recommendations. Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

In his objection, Plaintiff argues SCDC and Bellinger should not be dismissed because Plaintiff “has properly stated special claims for relief and special injunctive relief that should be granted against all of the Defendants.” Entry 10, 17. Plaintiff states his objections are made “to protect the Plaintiff’s rights to appeal from a judgment decided by the Honorable Joseph R. McCrorey . . . because the Plaintiff Adrian Marian Smith must protect his constitutional rights to freedom, life, liberty, and property that are guaranteed” by the United States Constitution. Id. at 12. Plaintiff further states he “strongly objects to the Eleventh Amendment of the United States Constitution in part, and . . . to S.C. Code Ann. § 15-78-70(e) (1976) . . . because the Plaintiff hereby draws the constitutionality of Act of Congress into question; especially objecting to ‘state sovereign immunity’ for the Defendants enjoining violations of federal law.” Id. at 14.

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The Magistrate Judge properly determined Defendant SCDC should be dismissed from this action based on Eleventh Amendment Immunity. See S.C. Code Ann. § 15-78-70(e)

(1976). Moreover, the Magistrate Judge properly determined Defendant Bellinger should be dismissed from this action because Plaintiff does not allege any factual allegations against Bellinger in the revised complaint. The court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly, Defendants SCDC and Bellinger are hereby dismissed from this action *without prejudice* and without issuance and service of process. This matter is recommitted to the Magistrate Judge for further pretrial handling.

IT IS ORDERED.

s/Margaret B. Seymour
United States District Judge

January 20, 2010
Columbia, South Carolina